

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 9725 OF 2015**

Sunanda Ukandrao Babhulkar  
Age: 47 years, Occu.: Service as A.N.M.,  
R/o Sub Station Garada,  
Tq. Kannad, Dist. Aurangabad.

..PETITIONER

**VERSUS**

1. The State of Maharashtra  
Through its Secretary,  
Health Department,  
Mantralaya, Mumbai-32.

2. The Additional Divisional Commissioner,  
Aurangabad Division, Aurangabad.  
(Copies to be served on GP,  
High Court Bench at Aurangabad)

3. The Chief Executive Officer,  
Zilla Parishad, Aurangabad.

..RESPONDENTS

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Mr. N.B. Jadhavar, Advocate for petitioner.  
Mr. P.G. Borade, AGP for Respondent Nos.1 and 2.  
Mr. R.A. Tambe, Advocate for Respondent No.3.

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**CORAM : RAVINDRA V. GHUGE, J.  
DATED : 21<sup>st</sup> MARCH, 2016**

**ORAL JUDGMENT :**

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the order dated 23.07.2015 delivered by Respondent No.2 by which the appeal preferred by the petitioner under Rule 13 of the Maharashtra Zilla Parishad, District Services (Discipline and Appeal) Rules, 1964 has been rejected on the ground that it suffers from delay.

3. The learned Counsel for the petitioner strenuously submits that he had sought to challenge the order dated 24.07.2012 delivered by Respondent No.3 under Rule 13 of the 1964 Rules. Since there was a delay of seven months, an application for condonation of delay was filed. He has set out the reasons in the application for seeking condonation of delay. Domestic reasons as well as his inability to contact his advocate as his advocate had changed the cellular phone number were also cited.

4. He further submits that Respondent No.2 concluded that since the delay is of seven months and the reasons set out in the application are not acceptable, the petitioner has not been able to satisfy the authority for condoning the delay.

5. The learned AGP alongwith Mr. Tambe, learned Counsel for Respondent No.3 have strenuously supported the impugned order.

Contention is that the reasons cited by the petitioner were neither acceptable, nor were reasonable. The limitation period prescribed under Rule 16 of the 1964 Rules is of 90 days. Unless the petitioner satisfy the competent authority of the reasons for delay, the application for condonation of delay could not be allowed.

6. They submit that seven months delay is a long period and is beyond the limitation of 90 days. As such, the petitioner was obliged to first explain the circumstances which prevented him from preferring an appeal within 90 days and thereafter explain the delay of 210 days.

7. Mr. Tambe has relied upon the affidavit in reply filed on behalf of Respondent No.3. He contends that this petition deserves to be dismissed with costs.

8. I have considered the submissions of the learned Counsels.

9. The petitioner has suffered a punishment under Rule 4(2) of withholding of one increment. It is not in dispute that he was entitled to prefer an appeal under Rule 14 before Respondent No.2 herein. It is also not in dispute that Rule 16 prescribes the limitation of three months from

the date on which the appellant receives a copy of the order in respect of which the appeal or revision is made. There is also no dispute that the petitioner had received the copy and he had failed to prefer an appeal within 90 days thereafter. The appeal consequentially suffered from delay of 210 days.

10. In my view, the application for condonation of delay has to be considered liberally since the rejection of such an application would deprive a litigant from challenging an order of punishment or as the case may be, before the competent authority. The doors of justice would be closed on him by rejection of such an application. Nevertheless, it also has to be looked into as to whether the delay is deliberate or intentional, whether the applicant is likely to gain an undue advantage by causing the delay, whether laches are attributed to the conduct of the applicant and whether the contention of delay is likely to cause grave injustice and manifest inconvenience to the opponent.

11. The Hon'ble Supreme Court in the matter of ***Collector, Land Acquisition Anantnag & Another Vs. Mst. Katiji and Others***, AIR 1987 SC 1353 had concluded in paragraph no.3 as under:-

“3. The legislature has conferred the power to condone delay by enacting Section 51 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice--that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

\*1 "Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908. may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would

*be decided on merits after hearing the parties.*

*3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*

*4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*

*5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*

*6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

*Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant,*

are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore. set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

12. Considering the fact situation and the law as is laid down by the Hon'ble Supreme Court, I do not find that the delay could be termed as being deliberate. Laches have not been attributed to the conduct of the petitioner. I do not find that the petitioner is likely to gain any advantage by delaying his appeal. In fact, he has virtually jeopardized his case on account of the delay.

13. In such a situation, the authority concerned was supposed to take a pragmatic view rather than adopting a pedantic approach. Considering the totality of the facts and circumstances of this case, I find that the impugned order has caused grave injustice to the petitioner since his right to question the order of punishment has been extinguished by the rejection of his application.

14. The petition is therefore allowed. The impugned order does not appear to be pragmatic. The same is therefore quashed and set aside. The delay caused in filing the appeal is condoned. Respondent No.2 shall accordingly register the appeal and decide the same on its merits.

15. The litigating sides shall therefore appear before Respondent No.2- The Additional Divisional Commissioner, Aurangabad Division,

Aurangabad on 06.04.2016 at 11.00 a.m. Respondent No.2 need not issue formal notices to the parties. The litigating sides shall thereafter abide by the dates of hearing on which the learned authority would post the matter for consideration.

16. This petition is allowed in the light of the above directions and rule is made absolute accordingly.

17. No costs.

**(RAVINDRA V. GHUGE, J.)**